

REMARKS

In the office action mailed July 14, 2009, the Examiner rejected Claims 1, 2, 5 and 6 as being anticipated under 35 U.S.C. § 102 by the Robbins reference (U.S. Patent No. 5,916,526). The Examiner further rejected Claims 3 and 4 under 35 U.S.C. § 102 as being obvious in view of the Robbins reference and the Mainquist et al. reference (U.S. Patent No. 6,534,014). By this paper, the Applicant has amended Claim 1 to highlight the subject matter that the Applicant believes is allowable over these cited references. Hence, reconsideration of the above-captioned application in light of the amendments and remarks contained herein is now respectfully requested.

After carefully reviewing Robbins, the Applicant notes that Robbins fails to disclose a container where the bottom of the container has a smaller surface area than that of a standard microtiter plate (*See, e.g.*, Claim 1). Robbins is, in fact, disclosing a standard microtiter plate (*e.g.*, “an array of tubes in *standard tube format*”, Abstract of Robbins) for use in PCR reactions. As such, Robbins does not anticipate Claim 1.

Further, Claim 1 as amended now requires that a probe carrier having at least one probe associated therewith be present in the container. Robbins does not disclose nor teach such a probe carrier. Robbins discloses a PCR assembly that may have reagents for PCR but these reagents do not have a probe carrier “in the form of a solid particle” as is now required by Claim 1 as amended. Antecedent support for this amendment can be found on page 2, lines 19-21, 26 and 27 of the Application as filed.

Further, PCR reagents are not actually prepositioned in the Robbins tubes and there is no discussion of having any such solid particle probe carrier. Further a person of ordinary skill in the art would not think of the reagents for PCR disclosed in Robbins as a probe carrier carrying a probe since the filed of application of a probe/probe carrier is significantly different than a PCR based reaction. As such, Robbins neither discloses nor teaches Claim 1 as amended. Further, with respect to Mainquist, the Applicant notes that Mainquist discloses a specimen plate which also does not have the probe carrier in the form of a solid particle as required by Claim 1 as amended.

Application No.: 10/783,409
Filing Date: February 20, 2004

Based on the foregoing, the Applicant submits that Claim 1 is allowable over the art of record. The Applicant believes that the remaining claims define additional patentable subject matter and are further allowable due to their dependency on Claim 1. As such, the Applicant believes that the above-captioned application is in condition for allowance and requests the prompt allowance of the same. Should there be any impediment to the prompt allowance of this application that could be resolved by a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below.

No Disclaimers or Disavowals

Although the present communication includes characterizations of claim scope and referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-owned patent of the present application's assignee.

| Serial Number | Title | Filed |
|--|---------------------------|--------------|
| 10/783,412 (U.S. Patent No. 7,219,800) | MODULAR ARRAY ARRANGMENTS | 05/22/2007 |

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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